

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LIFESTYLE COMMUNITIES, LTD., <i>et al.</i>,)	Civil Action 2:22-CV-1775
)	
Plaintiffs,)	
v.)	Judge Sarah D. Morrison
)	
CITY OF WORTHINGTON, OHIO,)	
)	
Defendant.)	Magistrate Judge Elizabeth P. Deavers
)	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

EXHIBIT 20

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Beth Kowalczyk

November 10, 2023



PRI COURT
REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 LIFESTYLE COMMUNITIES,)
5 LTD., ET AL.,)
6 Plaintiffs,)
7 vs.)
8 CITY OF WORTHINGTON,)
9 OHIO,)
10 Defendant.)
11 Case No.
12 2:22-cv-1775

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DEPOSITION

of BETH KOWALCZYK

Taken at Worthington City Hall
6550 North High Street
Worthington, Ohio 43085

on November 10, 2023, at 8:58 a.m.

Reported by: Julia Lamb, RPR, CRR

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STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition of BETH KOWALCZYK, the witness
herein, called by the Plaintiffs under the
applicable Rules of Federal Civil Court
Procedure, may be taken at this time by the
stenographic court reporter and notary public by
agreement of counsel; that said deposition may
be reduced to writing stenographically by the
court reporter, whose notes thereafter may be
transcribed outside the presence of the witness;
and that the proof of the official character and
qualification of the notary is waived.

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1 property to be one of many issues that are
2 significant to this community.

3 Q. Okay. So you do?

4 A. I don't think that this community --
5 this issue is an exclusively significant issue.
6 It's one of many.

7 Q. Do you agree that the property should be
8 rezoned to a planned unit development?

9 MR. SCHUMACHER: Objection. Relevance.
10 You can answer.

11 A. I would like to see something happen on
12 that property. Obviously there's a process that
13 that goes through.

14 Q. Okay. But my question's a little bit
15 different. You know, looking at -- do you agree
16 that the property should be rezoned to a planned
17 unit development or something else?

18 MR. SCHUMACHER: Objection. You just
19 asked that question.

20 A. I would like to see something happen on
21 that property that would benefit the community.
22 The particular mechanism through which that
23 happens I don't have an opinion on. That's a
24 process that needs to be determined.

1 Q. Okay. And in your mind what would
2 benefit the community? In other words, what are
3 you referring to that could be redeveloped on
4 the site?

5 MR. SCHUMACHER: Objection. Asked and
6 answered.

7 A. That we have something that supports our
8 need for economic development, so commercial,
9 that certainly supports housing options for the
10 city, and that there be some park space, some
11 greenspace that is available for use by
12 residents and by the city, and frankly some
13 mixed use would be welcome.

14 Q. So mixed use development?

15 A. I guess if that's --

16 MR. SCHUMACHER: Objection.

17 A. I guess if that's what you want to
18 characterize what I just said, but what I said
19 is what I said.

20 --0--

21 (Deposition Exhibit 111 marked.)

22 --0--

23 BY MR. INGRAM:

24 Q. Handing you what's being marked as

1 MR. SCHUMACHER: Same objection.

2 A. Same answer.

3 Q. Exhibit 7 replaces Exhibit 1 -- is that
4 correct? -- in the city's comprehensive plan.

5 A. It's an amendment to the 2014
6 comprehensive plan amendment, and yes, my
7 understanding is it would replace that 2014
8 amendment.

9 Q. And so with respect to Exhibit 7, this
10 plan will guide and facilitate any future
11 development process for Lifestyle's property,
12 correct?

13 A. This 2022 amendment would essentially
14 serve the same purpose as the prior amendment
15 did in terms of being a guide for city staff and
16 for city council in evaluating development
17 proposals on the property.

18 Q. And there are guiding principles,
19 correct?

20 A. Yes, there on page 1 it says guiding
21 principles.

22 Q. The first guiding principle is that the
23 development of Lifestyle's property be
24 considered and executed holistically as an

1 integrated whole. Is that correct?

2 MR. SCHUMACHER: Objection. That
3 misstates the principle.

4 A. That's what the document says. That it
5 is important that the development of the
6 property be considered and executed holistically
7 as an integrated whole.

8 Q. So can Lifestyle move forward with an
9 application to rezone a portion of its property
10 as opposed to the entire site?

11 MR. SCHUMACHER: Objection to the
12 hypothetical nature, but you may answer.

13 A. This amendment and the comprehensive
14 plan are guidance documents. So Lifestyle could
15 propose to develop -- they could put forth a
16 proposal to develop the property in any manner
17 that they want, and it would be evaluated
18 against this and other things.

19 Q. Okay. If they move forward with an
20 application that only sought to develop, say, 10
21 of the 40 acres of that property, it would be
22 contrary to this guiding principle, correct?

23 MR. SCHUMACHER: Objection.
24 Hypothetical and argumentative.

1 A. It would depend on what the proposal is.
2 It is a hypothetical. I'm not going to give a
3 definitive answer on it.

4 Q. Okay. As a member of city council, what
5 is your understanding of this first guiding
6 principle, then?

7 A. Exactly what it says. It's important
8 that the development of the property be
9 considered and executed holistically as an
10 integrated whole, and that language is part of
11 an amendment to the comprehensive plan which is
12 a guide to city council and to the city when
13 evaluating proposals.

14 Q. So the term executed -- I'm sorry,
15 strike that.

16 The phrase executed holistically as an
17 integrated whole, what does that mean to you as
18 a member of city council?

19 MR. SCHUMACHER: Objection.

20 You can answer.

21 A. well, ideally the consideration would be
22 that there be a proposal that incorporates the
23 majority of the property and that it's
24 integrated in a sense that, you know, things

1 work together, but again, it really depends. I
2 mean, in terms of evaluating from a land use
3 perspective, I can't say that. I'm not an
4 expert on how those terms are interpreted from
5 that perspective.

6 Q. Is this something that you would rely
7 upon the city staff for?

8 A. I would -- that would be part of my
9 review if something were to come before me,
10 would be city staff interpreting how a proposed
11 development would or would not apply to these
12 principles.

13 Q. And with respect to the fourth guiding
14 principle, we seek an outcome on this land that
15 is distinctive, exceptional, and expressive of
16 Worthington's own values and community ethos.
17 Do you see that?

18 A. I see that.

19 Q. As a member of city council what is your
20 understanding of this guiding principle
21 concerning Lifestyle's property?

22 A. I don't understand your question. Are
23 you -- what are you asking me to do with this
24 statement?

1 Q. What is your understanding of what this
2 means as a guiding principle dictating the
3 development of that property across the street?

4 A. I mean, they're aspirational goals of
5 what we would like to see on the property. I
6 mean -- and that it fits within the framework of
7 what we see in Worthington, and probably, you
8 know, frankly the rest of the comprehensive plan
9 has a lot of information on these items.

10 Q. Okay. I'm going to tell you I have no
11 idea what this means and that's why I'm asking
12 you as a member of city council what -- what
13 type of plan or development would be expressive
14 of Worthington's community ethos? What does
15 that mean?

16 MR. SCHUMACHER: Objection. Move to
17 strike the comment of counsel and argumentative.

18 Is there a question?

19 A. Yeah. I'm sorry, what's the question?

20 MR. INGRAM: You can read back my
21 question, please.

22 (Record read as requested.)

23 MR. SCHUMACHER: Same objection, but go
24 ahead.

1 A. I'm not going to attempt to define
2 community ethos. What I can tell you is an
3 example of something that I think fits within
4 this now is the Stafford Village to the Hartford
5 development.

6 Q. Okay. Why's that?

7 MR. SCHUMACHER: Can I have a continuing
8 objection to the hypothetical nature of these
9 questions?

10 MR. INGRAM: Sure.

11 MR. SCHUMACHER: Thank you.

12 A. It exhibits -- it fits within the
13 neighborhood. It serves a purpose for the
14 community. You know, I would want to have more
15 time to think about it so I'm not going to
16 expound on that. It just -- that's something
17 that came to my mind in looking at this, but I
18 think what you said was that we -- I in
19 particular -- I'm not a planner. I wouldn't
20 necessarily know how to interpret this as a
21 planner, but would rely on the city staff to
22 provide some guidance in that area.

23 Q. Turning to the general components on the
24 following page of resolution 4-2022, the first

1 general component makes reference to a large
2 contiguous greenspace. Do you see that?

3 A. Yes.

4 Q. Large contiguous greenspace is
5 undefined, correct?

6 MR. SCHUMACHER: Objection.
7 Argumentative.

8 A. It says a large contiguous greenspace.

9 Q. Okay. How large of a contiguous
10 greenspace is necessary to be approved under
11 this general component?

12 A. I'll go back to this is a guidance
13 document that is used to evaluate proposals, and
14 so city staff would have some -- as they look at
15 a proposal, would look at these items and give
16 some feedback to us regarding whether they
17 thought it would apply. I mean, there's things
18 in here, there's things in the comprehensive
19 plan. They don't all have specific definitions.
20 They're guiding documents.

21 Q. So there needs to be back and forth
22 between city staff, city council, and the
23 applicant, correct?

24 MR. SCHUMACHER: Objection. That

1 mischaracterizes her testimony.

2 A. It's not what I said. I said as they
3 evaluate this and provide city council
4 information about how they evaluate a proposal
5 against this plan.

6 Q. Okay. And in your mind what constitutes
7 a large contiguous greenspace as a member of
8 city council applying this plan to the rezoning
9 of the property across the street?

10 MR. SCHUMACHER: Which application we
11 talking about?

12 A. Yeah, I don't know what application
13 you're talking about, and honestly, I wouldn't
14 be able to answer that question.

15 Q. Okay. And with respect to a greenspace,
16 what is an acceptable greenspace for that
17 property? What does that mean?

18 MR. SCHUMACHER: Same objection and
19 asked and answered.

20 A. And I'll give you the same answer. I
21 think it would be evaluated based on city
22 staff's recommendations and evaluation of the
23 proposal.

24 Q. So other than referring to city staff's

1 evaluation of the proposal, what else, if
2 anything, would you refer to to understand what
3 large contiguous greenspace would be acceptable
4 for the property across the street?

5 MR. SCHUMACHER: Objection. Vague.

6 A. Yeah, I don't even know how to answer
7 that question. My process is when a proposal is
8 brought before council, I receive information
9 from city staff to evaluate that proposal, and I
10 rely on that information. And as I said before,
11 when a development is being proposed anywhere in
12 the city, if there are concerns or support or
13 any kind of feedback from city residents, then I
14 take that into consideration as well.

15 Q. As a member of city council where would
16 you direct Lifestyle to discern what this first
17 general component requires?

18 A. Probably the feedback that they've
19 already received from the MPC and city staff
20 that was outlined in the city memo related to
21 the existing -- I mean, this document isn't --
22 it's a little shorter, but it really doesn't
23 change I think the components of what we're
24 looking for in the property based on the

1 comprehensive plan amendment. And you know, I
2 think there was some discussion of greenspace in
3 that response as well as other items where they
4 were evaluated against the plan amendment.

5 Q. With respect to the third general
6 component where it says that residential
7 housing, though requiring a rezoning, is
8 desirable, if it is creatively executed, do you
9 see that?

10 A. I do see that.

11 Q. As a member of city council what
12 constitutes creatively executed residential
13 housing for this property?

14 MR. SCHUMACHER: Same objections.

15 A. Yeah, I'm not exactly sure how to define
16 creatively executed, and I would hesitate to do
17 that in any way that would be -- I mean, it's
18 just my opinion. It's not, again, something
19 that's evaluated by city staff who are experts
20 in planning so I don't know if there's some
21 specific definition that could be applied there.

22 Q. So you're not aware of any definition
23 that could be applied there. Is that fair?

24 MR. SCHUMACHER: That's not what she

1 said. Objection.

2 A. Yeah, that's not what I said.

3 Q. Okay. Where's it defined then?

4 MR. SCHUMACHER: Objection. She just
5 gave you her answer.

6 A. I am not aware of whether there is a
7 definition used by city planners related to how
8 housing is executed and in this instance
9 creatively executed. There may be some
10 definition I'm not aware of.

11 Q. Okay. As a member of city council where
12 would you direct Lifestyle to discern what
13 constitutes creatively executed residential
14 housing on its property?

15 A. This is planning, land use and planning
16 execution. I would talk to city staff or
17 planners. I am not certain.

18 Q. With respect to the second general
19 component what constitutes acceptable select
20 service-oriented retail for this property in
21 your mind?

22 A. I'll go back to I believe that is
23 something that city staff would evaluate in
24 terms of need, and that could change depending

1 on when a proposal's brought forth, but there's
2 always evaluation of what the city needs in
3 terms of economic development and the type of
4 mixed use development that would suit a
5 neighborhood.

6 Q. Anything else?

7 A. No.

8 Q. And you voted against resolution 4-2022,
9 correct?

10 A. Yes.

11 Q. In your experience has city council ever
12 considered legislation that affects only one
13 property owner without providing that property
14 owner advanced notice?

15 MR. SCHUMACHER: Objection. Relevance.
16 But you can answer.

17 A. Can you restate the question?

18 Q. In your experience has city council ever
19 considered legislation that affects only one
20 property owner without providing that property
21 owner advance notice?

22 A. Legislation I consider an ordinance.

23 Q. All right. How about resolutions?

24 MR. SCHUMACHER: Did you finish your

CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Julia Lamb, RPR, CRR, a
stenographic court reporter and notary public in
and for the State of Ohio, duly commissioned and
qualified, do hereby certify that the
within-named BETH KOWALCZYK was first duly sworn
to testify to the truth, the whole truth, and
nothing but the truth in the cause aforesaid;
that the testimony then given was taken down by
me stenographically in the presence of said
witness, afterwards transcribed; that the
foregoing is a true and correct transcript of
the testimony; that this deposition was taken at
the time and place in the foregoing caption
specified.

I do further certify that I am not a
relative, employee or attorney of any of the
parties hereto; that I am not a relative or
employee of any attorney or counsel employed by
the parties hereto; that I am not financially
interested in the action; and further, I am not,
nor is the court reporting firm with which I am
affiliated, under contract as defined in Civil
Rule 28(D).

In witness whereof, I have hereunto
set my hand at Columbus, Ohio, on this 20th day
of November, 2023.

Julia Lamb

Julia Lamb, RPR, CRR
Notary Public, State of Ohio

My commission expires: 10-10-27

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For more information, including a link to the meeting, check out the city's web page devoted to this proposal: <https://worthington.org/624/UMCH-Development-Proposal>



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